

PUBLIC

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UA 285/05 Death Penalty

USA (Virginia) Robin Lovitt (m)

Robin Lovitt is scheduled to be executed in Virginia on 30 November. He was sentenced to death in 1999 for the murder of Clayton Dicks the previous year. His lawyers claim that he could prove his innocence if DNA evidence used at his trial had not been illegally destroyed.

Robin Lovitt was previously scheduled to be executed on 11 July 2005, but was granted a stay by the US Supreme Court just four and a half hours before he was due to be executed, to allow the Court to decide whether Lovitt's case merited further review when it reconvened in October. On 3 October, the Supreme Court decided not to hear his case, reportedly without giving further explanation.

Most of the small amount of DNA evidence presented at trial linking Lovitt to the crime was illegally destroyed by a court clerk to free up space in court storage rooms, before Lovitt could appeal against his conviction. In 2003, the Virginia Supreme Court rejected an appeal that this violated Lovitt's right to due process (fair legal procedures), ruling that the clerk did not act in bad faith when he ordered that the evidence be destroyed.

In May 2005, the work of the state's crime laboratory, The Virginia Division of Forensic Science, which carries out DNA testing, was criticised in a review by the American Society of Crime Laboratory Directors (ASCLD). The review reportedly concluded that a chief scientist failed to follow proper procedures when testing evidence in the case of Earl Washington, a former death row inmate who was pardoned in 2000 after retesting of DNA raised doubts about his guilt. The review also reportedly found that the scientist's analysis of the evidence was wrong and concluded that an internal review had failed to flag the error made by the scientist. The ASCLD review made a number of recommendations to Governor Warner. These included restricting the work of the lab's chief DNA scientist, reviewing 40 cases that he has handled in recent years, along with an additional 110 cases involving "low" levels of DNA, and developing procedures to insulate the lab from any outside political pressures.

Following the review by the ASCLD, Governor Warner summoned a panel of five scientists from other states and asked them to review more than 160 cases involving the same kind of "low-level" DNA evidence that was at issue in the Washington case. One of these cases was that of Robin Lovitt. The review, which has been criticised for focusing only on procedures and not the re-testing of evidence, found that the lab properly handled the DNA evidence in Lovitt's case. According to reports, the length of the review, which took only a week and a half, has been criticised by lawyers familiar with Virginia's forensic laboratory. The forensic scientist whose work on behalf of Earl Washington uncovered the laboratory's error in handling evidence has allegedly called the speed at which the review was done "laughable".

A coalition of local activist groups has asked Governor Warner to go further and order retesting of DNA samples in all Virginia's 23 death penalty cases in which biological evidence was used to obtain a conviction. The coalition has also asked for the commutation of Lovitt's death sentence and urged that no executions be carried out until such retesting and review is complete. According to reports, state authorities have said that DNA played only a marginal role in Lovitt's prosecution. However, Lovitt's attorneys disagree and say that retesting might cast doubt on his guilt. The Governor of Virginia has the authority to grant clemency on his own initiative and authority, even if not in receipt of a specific clemency petition.

Amnesty International opposes the death penalty in all cases, regardless of questions of guilt or innocence. In the USA, the capital justice system is marked by arbitrariness, discrimination and error. Since executions resumed in the USA in 1977, 121 people have been released from death rows around the country on grounds of innocence. Other people have been executed despite serious doubts about their guilt in the crimes for which they were sentenced to death.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language:

- expressing concern that Robin Lovitt is scheduled to be executed on 30 November;
- expressing sympathy for the family and friends of Clayton Dicks, and explaining that you are not seeking to condone the manner of his death or to minimize suffering caused;
- urging Governor Warner to commute Robin Lovitt's death sentence;
- expressing concern at reports that the independent review of 160 cases ordered by Governor Warner following the ASCLD recommendations, which included the case of Robin Lovitt, focussed only on procedures and not re-testing of evidence;
- urging Governor Warner to ensure the retesting of DNA evidence in all death penalty cases where this was used to secure a conviction.

APPEALS TO:

Governor Mark R Warner
State Capitol, 3rd Floor
Richmond, VA 23219, USA
Fax: +1 804 371 6351
Salutation: Dear Governor

COPIES TO:

Diplomatic representatives of the USA in your country.

In your own words you may write brief letters (not more than 250 words) to "Letters to the editor" at:

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